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Personnel - 4

Approved For Release 2002/08/06 : CIA-RDP78-04718A000500130025-7

OGC Has Reviewed

MEMORANDUM FOR: The Director of Central Intelligence

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SUBJECT: [REDACTED]

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1. PURPOSE OF THE TRIP--As briefed by the Deputy Director/Intelligence, my mission was to take action in connection with the case of the United States vs [REDACTED] to assure that two CIA employees subpoenaed as witnesses for the prosecution would not testify against the defendant. To this end I was to inform the presiding judge, [REDACTED] of the basis for the Agency's position and to take such action during the course of the trial as would protect the Agency and the employees.

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2. MAJOR ACTIVITIES--I endeavored to see Judge [REDACTED] before trial but in accordance with local court custom was unsuccessful. I endeavored to persuade the Special Prosecutor for the Department of Justice, Mr. [REDACTED] to drop that part of the indictment relating to CIA or, in the alternative, to proceed without calling the CIA witnesses, but was unsuccessful. The witnesses when called refused to testify upon instructions from the Director. With the Court's permission I argued that this refusal was based on a valid claim of privilege, but was overruled. On continued refusal the Court held the CIA witnesses in contempt. I was successful in persuading Mr. [REDACTED] not to call the witnesses in rebuttal. Mr. [REDACTED] was unsuccessful in an attempt at the trial's end to withdraw his questions to the witnesses and to dismiss that part of the indictment relating to CIA. I authorized the CIA witnesses to employ a local attorney to represent them in the contempt proceedings. At the contempt hearing both the attorney and I argued in support of the claim of privilege and further that individuals acting under instructions could not be held in contempt. The Court overruled these contentions and sentenced the individuals to fifteen days imprisonment for contempt. Bail was immediately granted and I arranged with the local attorney to take the necessary action to appeal from the contempt judgement. A detailed chronological statement is contained in Appendix A.

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3. FINDINGS.

25X1 a. Difficulty was experienced in handling the situation [] due in part to the fact that I had not been consulted on the earlier developments of the case and had not taken part in any of the negotiations with the Department of Justice. (See Appendix B.)

b. Additional difficulty was experienced because instructions and briefings were received at various times from a variety of officials of the Agency including the Deputy Director, Deputy Director/Intelligence, and the Inspector General on occasion relayed through Assistant Director for Operations and the Legal Staff. The situation improved when the Legal Staff finally became the main channel.

25X1 c. Any situation which would tend to expose the Agency or any portion of its operations to scrutiny or authority outside the Executive Branch of the Government is highly explosive no matter how small the originating item may seem. Our many experiences with the Legislative Branch indicate that most disputes with Congress can be brought to a satisfactory compromise resolution. The [] case demonstrates that the Judicial Branch is far less susceptible of approach for satisfactory solutions.

d. While the inability to convince the Court on the points of law constitutes failure to achieve the basic Agency aim, the fact that the witnesses refused to testify for the prosecution and were not called in rebuttal has maintained the relationship of the Contacts Division to its sources in a manner which the Division states is satisfactory for future intelligence production. The effect of the jail sentence cannot be determined until the question of appeal or executive clemency is determined.

4. RECOMMENDATIONS.

a. Since the General Counsel is responsible for the conduct of all strictly legal matters arising out of the official business of the Agency, the General Counsel must be recognized as having authority, subject only to the Director's instructions, to inform himself, and to advise and make recommendations, on legal problems and the legal aspects of problems arising within the Agency.

b. When a problem primarily legal in nature arises such as involvement of the Agency in the Courts, General Counsel should be the point of coordination and the main channel for liaison and information.

c. In any situation which might involve the Agency or its operations in Courts of law, the Agency should be prepared to take extraordinary measures to avoid its subjection to the authority of the Courts.

5. ACTION TAKEN.--General Counsel has been and will be prepared to undertake the responsibilities and authorities set forth above.

LAWRENCE R. HOUSTON
General Counsel